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Attorneys for Third-Party Defendant  
 COOPER INDUSTRIES, LTD.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF VIOLA B. SPAULDING;  
 FLORENCE SPAULDING, trustee; LYNN  
 SPAULDING, doing business as Spaulding  
 Enterprises; and TINA SPAULDING  
 WARD, doing business as Spaulding  
 Enterprises, THE CONSERVATORSHIP OF  
 EILEEN SPAULDING

Plaintiff,

vs.

YORK CLEANERS, INC., a dissolved  
 California corporation; ESTATE OF  
 BARNARD LEWIS, DECEASED; DAVID  
 VICTOR LEWIS, an individual; MARTIN  
 FRANCHISES, INC., an Ohio corporation;  
 SETH R. DOLE, an individual; and RUTH  
 DOLE, an individual; and DOES 1 through  
 100,

Defendant.

MARTIN FRANCHISES, INC., an Ohio  
 corporation,

Third-Party Plaintiff,

vs.

COOPER INDUSTRIES, LTD., a Texas  
 corporation,

Third-Party Defendant.

CASE NO. C 08-00672 CRB

**ANSWER OF COOPER  
 INDUSTRIES, LLC TO THIRD  
 PARTY COMPLAINT OF  
 MARTIN FRANCHISES, INC.**

Gordon & Rees LLP  
 101 West Broadway, Suite 2000  
 San Diego, CA 92101

1 Third Party Defendant Cooper Industries, LLC ("COOPER") answers and  
2 responds to the Third Party Complaint of Martin Franchises, Inc. ("Third Party  
3 Plaintiff"), as follows:

4 **JURISDICTION AND VENUE**

5 1. COOPER is without sufficient information or belief to admit or deny  
6 the allegations in Paragraph 1 and on that basis denies the allegations of Paragraph  
7 1.

8 2. COOPER is without sufficient information or belief to admit or deny  
9 the allegations in Paragraph 2 and on that basis denies the allegations of Paragraph  
10 2.

11 **PARTIES**

12 3. COOPER admits the allegations in paragraph 3.

13 4. COOPER admits that it is a corporation with its principle place of  
14 business in Houston, Texas. COOPER denies the remaining allegations of  
15 paragraph 4.

16 **FIRST CAUSE OF ACTION**

17 **[Contractual Indemnity]**

18 5. COOPER incorporates by reference its answers and responses to  
19 Paragraphs 1 through 4 above as though fully set forth herein.

20 6. COOPER denies the allegations in paragraph 6.

21 7. COOPER denies the allegations in paragraph 7.

22 8. COOPER admits the allegations in paragraph 8.

23 9. COOPER admits that it has not accepted Third Party Plaintiff's tender  
24 of the claim herein. COOPER denies the remaining allegations in paragraph 9.

25 10. COOPER denies the allegations in paragraph 10.

26 ///

27 ///

28

**SECOND CAUSE OF ACTION**

**[Declaratory Relief]**

11. COOPER incorporates by reference its answers and responses to Paragraphs 1 through 10 above as though fully set forth herein.

12. COOPER denies the allegations in paragraph 12.

13. COOPER denies the allegations in paragraph 13.

14. COOPER is without sufficient information or belief to admit or deny the allegations in Paragraph 14 and on that basis denies the allegations in Paragraph 14.

COOPER further alleges the following affirmative defenses in response to the Third Party Complaint:

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Third Party Complaint fails to state a claim upon which relief can be granted.

**FIRST AFFIRMATIVE DEFENSE**

Under the operative agreement(s) which govern the respective liabilities of Third Party Plaintiff and COOPER with respect to One Hour Martinizing franchises, COOPER has no liability for the franchise at issue in this action.

**SECOND AFFIRMATIVE DEFENSE**

Under the operative agreement(s) which govern the respective liabilities of Third Party Plaintiff and COOPER with respect to One Hour Martinizing franchises, COOPER has no duty to indemnify Third Party Plaintiff for the claims related to the dry cleaning franchise at issue in this action.

**THIRD AFFIRMATIVE DEFENSE**

Under the operative agreement(s) which govern the respective liabilities of Third Party Plaintiff and COOPER with respect to One Hour Martinizing

1 franchises, liability for the dry cleaning franchise at issue in this case rests with  
2 Third Party Plaintiff.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 There is no agreement or contract or contractual provision between Third  
5 Party Plaintiff and COOPER which was entered into on or about 1981 which  
6 requires COOPER to provide full written indemnity to Third Party Plaintiff for  
7 injuries and/or damages arising out of the operations of the dry cleaning franchise  
8 at issue in this action.

9  
10 **FIFTH AFFIRMATIVE DEFENSE**

11 Third Party Plaintiff's claims are not ripe.

12 **SIXTH AFFIRMATIVE DEFENSE**

13  
14 If COOPER is judged liable for any damages claimed in this Third Party  
15 Complaint, such damage should be apportioned among all parties, proportionate to  
16 their degree of fault, and any such judgment against COOPER should be reduced  
17 or apportioned according to the principles of complete or partial indemnity.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 COOPER asserts all applicable defenses pled by any other defendant to this  
20 action, and hereby incorporates the same herein by reference.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 COOPER reserves the right to offer additional defenses which cannot now  
23 be articulated due to Third Party Plaintiff's failure to particularize its claims or to  
24 COOPER's lack of knowledge of the circumstances surrounding Third Party  
25 Plaintiff's claims. Upon further particularization of the claims by Third Party  
26 Plaintiff or upon discovery of further information concerning its claims, COOPER  
27 reserves the right to assert additional defenses.  
28

**PRAYER FOR RELIEF**

WHEREFORE, COOPER prays for judgment against Third-Party Plaintiff as follows:

1. That Third-Party Plaintiff take nothing by way of this action;
2. That in the event COOPER is held liable to Third-Party Plaintiff in any manner or fashion whatsoever, that such liability be apportioned among all parties proportionate to each party's degree of fault;
3. That COOPER be awarded its costs incurred in this action, including attorney's fees; and
4. That the Court grant such other further relief as it may deem just and proper.

Dated: *June 18, 2008*

GORDON & REES LLP

By: 

P. Gerhard Zacher  
Kristin N. Reyna  
Attorneys for Third-Party  
Defendant  
COOPER INDUSTRIES, LLC

Gordon & Rees LLP  
101 West Broadway, Suite 2000  
San Diego, CA 92101

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 101 W. Broadway, Suite 2000, San Diego, CA 92101. On June 23, 2008, I served the within documents:

**ANSWER OF COOPER INDUSTRIES, LLC TO THIRD PARTY COMPLAINT OF MARTIN FRANCHISES, INC.**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, addressed as set forth below.
- X by ELECTRONIC FILING. I caused all of the pages of the above-entitled document(s) to be electronically filed and served on designated recipients through the Electronic Case Filing system for the above-entitled case. The file transmission was reported as successful and a copy of the Electronic Case Filing Receipt will be maintained with the original document(s) in our office

**SEE ATTACHED SERVICE LIST**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 23, 2008 at San Diego, California.



LaVernie Hayes

Gordon & Rees LLP  
101 West Broadway, Suite 2000  
San Diego, CA 92101

**SERVICE LIST**

Estate of Spaulding v. York Cleaners  
Case No. 3:08-CV-00672-CRB

<b>ATTORNEY</b>	<b>PARTY</b>
Bret Adam Stone John Richard Till Paladin Law Group, LLP 3757 State Street, Suite 201 Santa Barbara, CA 93105 Ph: (805) 898-9700 Fx: (805) 880-0499 Email: <a href="mailto:bstone@paladinlaw.com">bstone@paladinlaw.com</a> <a href="mailto:jtill@paladinlaw.com">jtill@paladinlaw.com</a>	<b>Plaintiffs, Estate of Viola B. Spaulding, Florence Spaulding, trustee, Lynn Spaulding, dba Spaulding Enterprises, Tina Spaulding Ward, dba Spaulding Enterprises, The Conservatorship of Eileen Spaulding</b>  <b>and</b>  <b>Counter-Defendant, Estate of Viola B. Spaulding</b>
Courtney Marissa Crawford Gregory William Poulos Cox, Wootton, Griffin, Hansen & Poulos LLP 190 The Embarcadero San Francisco, CA 94105 Ph: (415) 438-4600 Fx: (415) 438-4601 Email: <a href="mailto:ccrawford@cwghp.com">ccrawford@cwghp.com</a> <a href="mailto:gpoulos@cwghp.com">gpoulos@cwghp.com</a>  <b>VIA U.S. MAIL</b>	<b>Defendants, York Cleaners, Inc., Estate of Barnard Lewis, deceased, David Victor Lewis, an individual</b>  <b>and</b>  <b>Counter-Claimants, David Victor Lewis, an individual, York Cleaners, Inc.</b>  <b>and</b>  <b>Cross-Complainant, York Cleaners, Inc.</b>
Robert N. Berg Sedwick, Detert, Moran & Arnold LLP One Market Plaza Steuart Tower, 8 <sup>th</sup> Floor San Francisco, CA 94105 Ph: (415) 781-7900 Fx: (415) 781-2635 Email: <a href="mailto:robert.berg@sdma.com">robert.berg@sdma.com</a>	<b>Defendant, Counter-claimant and Third-Party Plaintiff, Martin Franchises, Inc.</b>  <b>VIA U.S. MAIL</b>